IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9626 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMED HANIF MOHAMED HUSSAIN IMMAMIYA SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9626 of 2002

MR NM KAPADIA for Petitioner No. 1

MISS NANDINI JOSHI Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/05/2003

ORAL JUDGEMENT

Heard the ld. counsel for the petitioner and ld. AGP Miss Joshi for the respondent.

The affidavit-in-reply on behalf of the respondent-detaining authority, Commissioner of Police, Surat City, is tendered today by the ld. AGP and the same is taken on record.

In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the detention order passed by the Police Commissioner, Surat City dated 16.9.2002 in exercise of powers vested under him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") branding the detenu as bootlegger within the meaning of sec. 2(b) of the PASA Act.

I have carefully considered the say of the petitioner as well as affidavit-in-reply. Undisputedly, the detenu has been detained because of his involvement in one solitary offence punishable under the Bombay Prohibition Act. However, the detaining authority while recording the subjective satisfaction has placed reliance on the statement of two unnamed witnesses who have narrated the behavior of the detenu as dangerous in maintenance of public order.

Bare reading of the grounds for detention served to the detenu, clearly indicates that the detaining authority has mainly placed reliance on the fact of involvement of the present detenu in the offence where 609 bottles of India made Foreign Liquor was seized and recovered worth Rs. 34,200/. Though the co-accused Firoz Anwarbhai Fruitwala is also detained by the authority for their wrong allegedly detected by the police. I am inclined to accept the say of Mr. Kapadia ld. counsel appearing for the petitioner that this wrong even if is accepted to have occurred even than this can be said to be an act prejudicial to the maintenance of law and order and not to public order. It is true that in a solitary offence allegedly committed by the detenu is not that grave and serious and prejudicial to public tranquility or health. Therefore, this petition requires to be allowed on these main two grounds.

In the result, this petition is allowed. The impugned order of detention dated 16.9.2002 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The detenu-Mohamed Hanif Mohamed Hussain Immamiya Shaikh is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case.

Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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